IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1765 of 1988
With
FIRST APPEAL No. 1766 of 1988

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NEW INDIA ASSURANCE CO LTD - Appellant(s)
Versus
MANEKBEN WD/O LAXMANBHAI RAMBHAI & 8 - Defendant(s)

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Appearance :
MR RAJNI H MEHTA for Appellant(s) : 1,
NONE for Respondent(s) : 1 - 9.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 10/08/2007

ORAL JUDGMENT

1. Mr.Rajni H.Mehta, learned counsel for the appellant. None for the respondents.

2. The appellant – Insurance Company, being aggrieved by the Award dtd.15/1/1988 passed by the Motor Accident Claims Tribunal (Auxiliary), Ahmedabad (Rural) at Narol in Motor Accident Claim Petition No.646 and 647 of 1983, is before this Court with a submission that in view of the defences raised by the Insurance Company, no award could be made against the interest of the Insurance Company. The only question raised before this Court is that the vehicle was driven by a person who was not holding any valid driving licence, therefore, the Insurance Company, in view of the breach of the policy terms, cannot be held liable. Mr.Mehta, learned counsel for the appellant submitted that the driver in his statement before the police had stated that he was not possessing a valid driving license.

3. From the records, it does not appear that except producing the alleged statement of the driver of the offending vehicle, any witness was called in the Court to prove that statement of the driver was recorded by him or whatever was contained in the recorded statement was correct. In absence of the driver, who gave statement or the person who recorded the statement,

production of the statement would not prove anything.

4. It was then contended that the Insurance Company did issue notices to the owner and driver to produce license, but they did not do so. On being asked whether any notice to produce document or admit facts, was given to him under the provisions of Order XI of the Code of Civil Procedure, Mr.Mehta, learned counsel for the appellant, after going through the records, submitted that no such steps were taken.

5. In the matter of National Insurance Company Limited Vs. Swaran Singh, AIR 2004 SC 1531, the Supreme Court while giving summary of the findings observed as under;

> “105(iii). The breach of policy condition e.g. disqualification of driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of Section 149, have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not themselves defences available to the insurer against either the insured or the third parties. To avoid its liability

> toward insured, insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the conditions of policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time."

In view of the said observations made by the Supreme Court, a simple defense of no license, fake license, forged license would not be a disqualification of the driver for driving at the relevant time and in any case, Insurance Company would be obliged to prove by leading cogent evidence that the driver had no license. The Supreme Court clearly observed that to avoid its liability towards insured, the insurer (Insurance Company) has to prove that the Insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the conditions of the policy regarding use of the vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time.

6. In the present case, the Insurance Company could not prove the fact that the insured lacked in exercising reasonable care in the matter of fulfilling the conditions of

the policy.

7. I find no reason to interfere. Both the appeals are dismissed. Interim relief, if any, is vacated. No costs.

(R.S. GARG, J.)

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